

***United States Court of Appeals
for the Second Circuit***



**APPELLEE'S
APPENDIX**

Docket **75-1428**
No.

B
P/S

IN THE
United States Court of Appeals
For the Second Circuit

UNITED STATES OF AMERICA,

Appellee,

— vs. —

VITO M. PASTORE,

Appellant.

On Appeal from the United States District Court,
Northern District of New York

APPENDIX FOR APPELLEE,
United States of America

JAMES M. SULLIVAN, JR.
United States Attorney
Northern District of New York

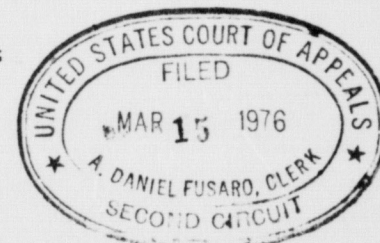
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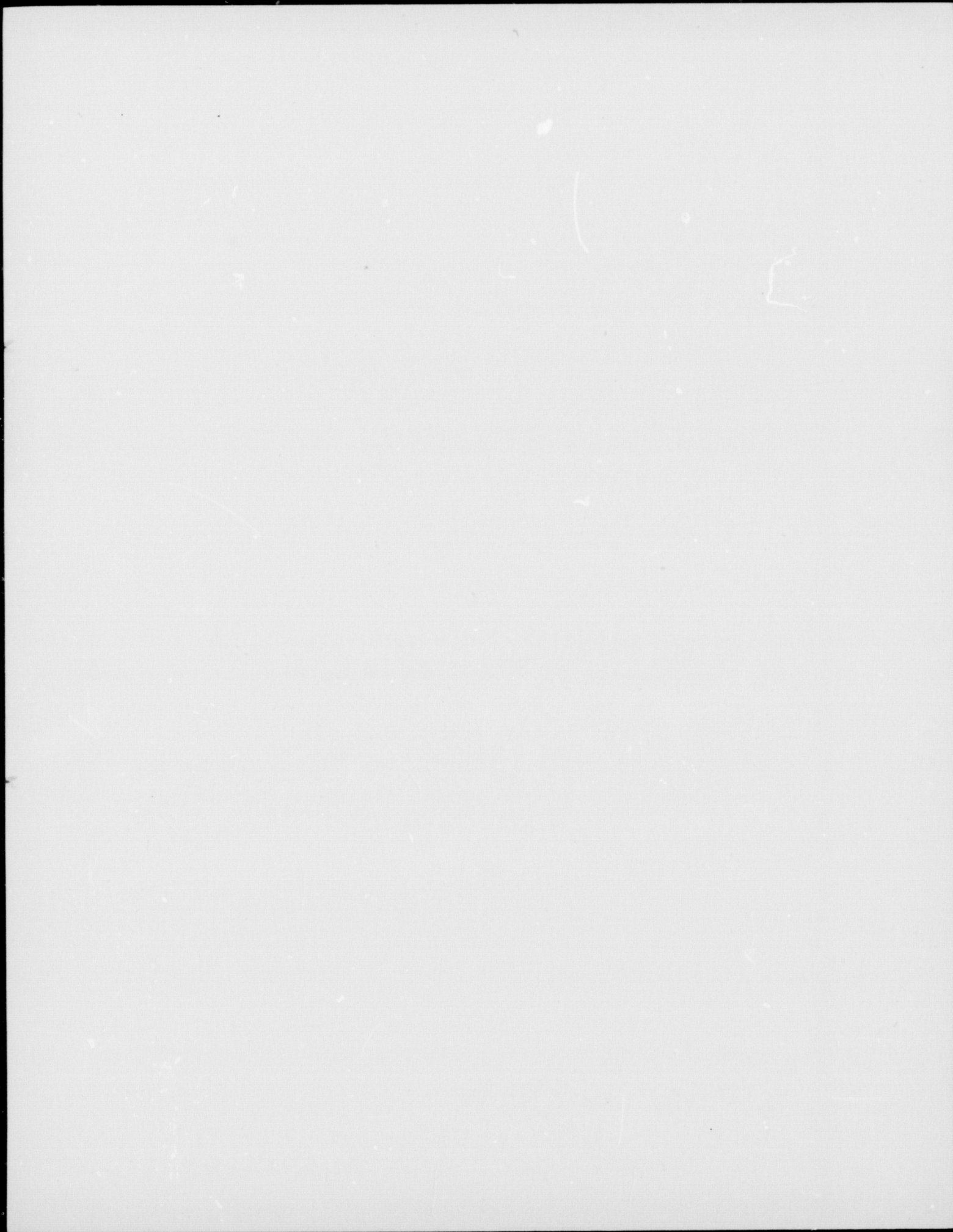
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Again, probability or possibility, because we know what he said before, and what motivations he has got now. The question really boils down to the reasonable doubt of Mr. -- whether you have any reasonable doubt of Mr. Cedrone's testimony, and I submit to you in view of what was promised to him, and the admitted perjurer that he is, that in my humble opinion I do not see where fair-minded jurors as I know you all are, can be convinced with that type of testimony and that type of individual.

In closing, I just wish to say to you that I appreciate the attentiveness that you have given me in this court, and I appreciate the Court's treatment of an attorney from Rochester. I have given you all of my arguments, why I believe my client should be acquitted, and naturally, the decision is yours, and I know that you will make it one that squares with your conscience, and with your sworn duties as jurors.

Thank you.

THE COURT: Mr. Lowe.

MR. LOWE: Thank you, your Honor.

Mr. Palmiere, and ladies and gentlemen of the jury: As I have told you in my opening statement Wednesday morning, I did not think it would

take a terribly long time to present the evidence to you in this case, and I think that we have moved along fairly rapidly. In fact, there was a period there on Wednesday when the witnesses were going in and out of here so fast that events were getting ahead of me, and I began to lose a little track of just where we were, and I think partly for that reason, and also because it is my duty at this time, I am going to review with you in some detail the evidence that has been presented to you.

I will very briefly repeat what Mr. Palmiere said to you, and that is if my recollection differs with yours with regard to what the witnesses said, or what the exhibits demonstrate, it is your recollection that controls, and I will not, because it is late in the afternoon and we are all tired, I will not, as Mr. Palmiere predicted, read that indictment to you again.

However, the indictment contains the charge that the defendant, Vito Pastore, prepared or had prepared and signed his 1971 income tax here at a time when he knew that it was not true and correct as to all matters. It is obvious to you now that that material matter that was not correct, we allege, that he substantially under-estimated his gross income for that

year, 1971, and he knew at the time that he signed the return that he had substantially understated his gross income.

I submit, and I will now attempt to summarize that for you, that the Government has shown beyond any doubt, based upon a reason, that Defendant Pastore's gross income for the year 1971 was more than twice that which he reported on his return, and before I review the evidence, though, I want to address myself to it.

Mr. Palmiere made much of the fact that the government did not prove here what happened to all of this cash after it entered the defendant Pastore's hands. Now, listen carefully to the Government's charge in that respect, as to what income is. I believe that the evidence shows that the Defendant, Pastore, provided services to Ron-Ore Soil Systems and he was compensated for those services. These exhibits show that; the testimony shows that, and therefore the moneys that he received, the cash that he received, that is income to him, the Government submits. True, we don't know what happened to that income after it entered his hands, but we don't have to show it. Certainly it is not the Government's obligation to prove this defendant guilty to a

mathematical certainty, and we are dealing with cash. How could we show what happened to that cash? Just listen to the Judge's charge on income in that respect.

Now, as I said, I think the evidence shows that we proved, we have proven Pastore, in the year 1971, received twice as much as he reported on his income tax return. How did we arrive at that figure? Mr. Palmiere submitted some of it for you, very briefly. It was stipulated, and I read those stipulations Wednesday morning, and it was stipulated that Mr. Pastore received income from the Auburn Urban Renewal Agency of around \$2,400 because that check is in evidence, and it will be available for you to look at.

It was stipulated that Mr. Pastore received around \$1,500 from the Auburn Community College in 1971, and that is income and the checks are here. The checks do not add up to quite \$1,500 because this, of course, is take-home pay. His gross income at the Auburn Community College in 1971 was around \$1,500, it has been stipulated.

It has also been stipulated that as Mr. Palmiere stated, that the Defendant Pastore in 1971 received court fees in the amount of \$2,635. There is no dispute about that.

It has been stipulated that in 1971 he received income in the amount of \$273.18.

Now, there is another item that the Government is charging Mr. Pastore with, and I don't think Mr. Palmiere addressed himself to it, and it is set forth on the tax return itself, and the Defendant Pastore received approximately \$307 in 1971 from his interest in the ownership of a building. Now, that is the building located at 64 Gerese Street in Auburn, where Mr. Pastore conducted his practice, and it is admitted on this return that he received \$307 from his interest in the ownership of that building.

But I do not think, as Mr. Palmiere said, I do not think that there is any dispute about those items, and they add up to around \$7,106. No dispute about those items.

Then, of course, we come to the items related to the Ron-Ore Soil Systems, and just in case I forget it later on, I want to address myself right now to a statement that Mr. Palmiere made, and he made much of it: He referred to a \$10,000 check that was shown to Mr. Cedrone, and I think Mr. Palmiere said that Mr. Cedrone said that Mr. Pastore ended up with that check, and Mr. Galloni had testified that that was a bonus check to him.

The Government is not charging the defendant with any \$10,000 check. You are going to take them all into the jury room with you, or they will be available with you. Don't be -- I am certain that Mr. Palmiere, if I understood what he was saying, misstated his recollection of the testimony. The Government is not charging the defendant Pastore with any \$10,000 check. We are not. Forget that \$10,000 check. However, what are the items of income relating to Ron-Ore Soil Systems that we are charging the defendant, Pastore, with? Exhibit 2 will be available to you. The Marine Midland Treasurer's check payable to Nick Galloni is \$13,300. There is no dispute. Mr. Pastore obtained the cash from that check. Mr. LoPiccolo testified that Mr. Pastore came in and according to Mr. LoPiccolo's recollection, Mr. Pastore said he wanted it for a client's payroll. Mr. LoPiccolo requested that Mr. Pastore endorse the check, and he refused to do so. Mr. LoPiccolo and Mr. Pastore have known each other for years, and Mr. LoPiccolo took him out, to the teller, and Mrs. Oughterson asked him to endorse the check, and he refused to do so. Mr. Pastore then asked her to give him the largest bills that she had, and she did, she gave him all of the hundreds and fifties and made up the difference

in smaller bills. No dispute. Mr. Pastore got that cash.

Now, first, listening to the cross-examination, I thought that the claim here was going to be that that was for a payroll of some sort. But it wasn't. Anyone who knows any company that has a cash payroll, they don't want the largest bills available from the bank. They don't pay payrolls with hundred dollar bills, fifty dollar bills, or larger.

And of course, as we know now, Ron-Ore at that time was making its payroll by check.

So the proceeds of this \$13,300 check did not go to anyone for a payroll. We have heard nothing else about that \$13,300 check, except the following: On cross-examination of Mr. Cedrone, Mr. Palmiere solicited, and I didn't mention it, but this check is dated May 14, 1971, and Mr. Palmiere elicited from Mr. Cedrone, that on or about May 14th, a \$50,000 check was drawn on the Ron-Ore account at Marine Midland. Now, the Marine Midland Bank statements are in evidence, and in here you can look it up, May 13th, 1971, a \$50,000 check. Mr. Cedrone stated in cross-examination that he received two checks on or about May 14th, and one was in the amount of \$10,000, he said, and he said that that check was re-deposited in the

account, and you can look it up. On May 14th, \$10,000 was deposited into the account, and that leaves \$40,000, doesn't it, out of the 50.

Mr. Cedrone admitted that he got \$13,000 out of that because Mr. Cedrone said he got two checks that day, one for 10, and one for 13. He re-deposited the 10, and kept the 13.

Now, that leaves, subtract 13 from 40, and we are now down to around 27,000 dollars, approximately. And this check we traced to Mr. Pastore in the amount of \$13,000 -- \$13,300, just about the same amount of the check that Mr. Cedrone ended up with. So there are two \$13,000 checks, and how much is left? Another \$13,000, and Mr. Cedrone told us, pursuant to Mr. Palmiere's questions, that who else ended up with a check? Lenny Cedrone. The government submits that that is how they did it. They are splitting up the pot. Lenny Cedrone gets his \$13,000; Frank Cedrone gets his \$13,000; and the Defendant, Vito Pastore, gets his \$13,000.

Now, what is another specific item of income that the government charges Pastore with? Exhibit 17, Marine Midland Treasurer's check in the amount of \$5,000, dated January 12, 1971.

Now, you will recall the testimony

there and Mr. Palmiere now in his summation is more than willing to admit that that is the endorsement of Vito Pastore on the back of that check. Of course, we had to do it the hard way. We had to put Mr. White, the handwriting expert, on the stand to testify that he did examine the endorsement on the reverse side of that check, and compared it to the signature on this tax return, and he compared it to the endorsements on these checks, and the endorsements here, and that signature is definitely the handwriting of Vito Pastore.

Well, we had to do it the hard way, but we did, and the handwriting expert said, yes, that is Vito Pastore's endorsement on the reverse side of that check. So another \$5,000 that we have established went to Mr. Pastore.

Now, what did Mr. Palmiere, what he has tried to assert here were the contentions to that \$5,000? On cross-examination of Mr. Cedrone, he elicited, and he showed Mr. Cedrone that check for \$5,000, and Mr. Cedrone admitted, yes, I got \$5,000 on or about that date. Mr. Cedrone hesitated; that doesn't look like it. But, yes, I got \$5,000.

On redirect, I then showed him this check, this one, Government's Exhibit 35 in evidence,

and a check in the amount of \$5,000, and dated January 12, 1971, and endorsed by Cedrone using the fictitious John Williams, and Cedrone's wife, and he deposited it into Frank Cedrone's savings in the Seneca County Savings and Loan Association. The same thing. They are doing it again. They are splitting up the pot. Frank Cedrone gets \$5,000; Vito Pastore gets \$5,000.

Now, in addition to those specific items of income, the Government offered in evidence, and it was received in evidence, five checks, and this is in connection with the testimony of Donald Corey, and he was the young teller from the Cayuga County Savings Bank. I will admit, I thought his cross-examination was a little confusing in the sense that did he specifically recall the date when he cashed these checks? Well, of course, he didn't recall the date. Naturally he didn't. What he was testifying to was based upon a stamp that is on each one of these checks, and again these checks will be available to you, and look at them in the jury room, and on each one was a stamp of his, and D.C., and he told us that those are his initials, Donald Corey, and the date. And when he picked up the check and said, "Yes, on January 4 I cashed a check," he did not remember that

particular date, he was relying on his stamp. However, he did remember Mr. Pastore. There is no doubt in his mind about that. And on two of these five checks, we have the initials of Mr. LoPiccolo, and also we have the letters "V.P." for Vito Pastore.

So Mr. LoPiccolo told us, yes, on certain occasions Mr. Pastore would come in and he would approve the cashing of the check and put initials, his initials, on and put the initials "V.P." on. Mr. Corey told us with regard to one of these checks, the \$3,000 Fusco check, he remembered that Mr. LoPiccolo was not there, and he took the check to Mr. Gower, and Mr. Gower approved it. Sure enough, Mr. Gower came in here and testified yesterday that those are his initials on the reverse side of that \$3,000 Fusco check. And very fundamentally, Mr. Corey's testimony, Mr. Corey testified that he cashed these checks drawn on the Ron-Ore account for no one other than Vito Pastore. No one else in all of these five checks had Donald Corey's stamps on them. Donald Corey cashed all of these checks, and cashed these checks for no one other than Vito Pastore.

And finally, what possible reason would he have to come in here and lie; Donald Corey? He has absolutely nothing to do with this prosecution, and

nothing to do with me. I laid eyes on him for the first time on Wednesday morning. He is not interested in anything here. What reason would he have to come in here and say that Vito Pastore cashed five checks, if he had only cashed two or three? What difference does it make to Donald Corey?

And Mr. Palmiere referred to the \$200 check. Now, that check, too, was received in evidence and is not among those that the Government is charging Mr. Pastore with not having reported during the year 1971, for the simple reason that that check was dated December 22, 1970. So, it is not part of the Government's case against Vito Pastore, and I do not think that I have to address myself to it any further for that reason.

Now, the \$7,500 check payable to James Williams. You will recall the testimony in that. Mr. Maywalt told us that he received the check from Vito Pastore in Mr. Pastore's office, and took the check across the street where, conveniently enough, a relative of Mr. Pastore, who is not a teller, but a secretary of some sort in the bank, she cashed this check, the check payable to the fictitious James Williams.

Mr. Cedrone, in his cross-examination

this morning, admitted the inconsistency in his testimony in the prior proceeding, and he said today he could not recall specifically anything about that check, but he did testify that he made an entry in the notebook that he kept with regard to that \$7,500 check, and he told us that the only times he made entries in that notebook was when a disbursement had been made that went to Pastore, and he said his procedure was that he would make a note and put it in his pocket, and later that night, or the next time he was home, he would make the entry in his notebook.

In addition, with regard to that \$7,500 check, examine the Marine Midland statement. You will see another check that was negotiated on that same account in the amount of \$7,500, a few days after the James Williams check was negotiated. Who got that other \$7,500 check? Was it like the \$13,300 check when Mr. Pastore got his share? Was it like the \$5,000 when Mr. Pastore got his share? Who got that \$7,500 check? Frank Cedrone. Was that Frank's share?

Then that brings us to the Cadillac, and my recollection it was a Cadillac, and not an Oldsmobile, but a 1971 Cadillac. Is there any dispute whatsoever about that Cadillac? Mr. Church came in

here and told us that Frank Cedrone and Vito Pastore went to the Cadillac dealership, and Frank Cedrone ordered his Cadillac, and the next day Vito Pastore wanted his Cadillac, and he calls up and orders a Cadillac, and Mr. Church recalls receiving the check, which is in evidence, a check on the Ron-Ore Soil Systems in the amount of \$4,062.55, and again, Frank Cedrone gets his, and Vito Pastore gets his.

Now, what are those figures? I told you it was \$7,000, and no dispute, none. No one is arguing about that. The Ron-Ore checks add up to, in my figures, and you will have the exhibits in the jury room, and you can add them up, too, to about \$34,000. The total was \$41,000 in income, a minimum, the income earned by Vito Pastore during 1971, and I say a minimum because I agree with Mr. Palmiere. We don't know --did Mr. Pastore perform any other legal services during 1971 that we don't know about? Who knows? It is a minimum gross income of \$41,000, that we have proven, more than twice what he reported on his tax return.

And I will very briefly mention the defense, the defense witnesses. In the first place, my figures, my addition, which could be faulty, I added up those figures to be \$5,500 that Mr. Pastore

supposedly disbursed on behalf of Mr. Cedrone in the year 1971. Every single disbursement after May of 1971, which is the last check which we are charging Vito Pastore with, they are all after that.

Is it credible, is it possible to believe that Mr. Pastore got this money in May of 1971 and he just held onto it and it was disbursed later? That was the defense, and of course, the witnesses had no knowledge whatsoever as to where Mr. Pastore got that money.

Now, the deal, the deal between the Government on the one hand, and Frank Cedrone, and Dominick Galloni on the other hand. I am not champion of Frank Cedrone. I am not going to stand here and defend him and say anything good about him. But Frank Cedrone was right in the middle of this. Frank Cedrone was getting as much money out of this as he possibly could. There is no doubt about that. He got more money out of it than Vito Pastore did, no doubt about that at all, more money because he did have equipment in there, and he was working there five days a week, but he got more out, a lot more.

He used fictitious names, and Frank Cedrone covered up, and he concealed, and he lied, no doubt about it. But it was not I who selected

Frank Cedrone to get up on that witness stand and tell a story. Vito Pastore selected Frank Cedrone, the liar, the man who covers up and conceals. It was Vito Pastore who contacted Frank Cedrone and asked him to bid on this project, and told him if you put a bid in at one and a half million you may get it. It was Vito Pastore who sought out this contractor maybe 60 or 70 miles away from Fleming to do this job. When people of the ilk of Frank Cedrone and Lenny Cedrone and others get together and commit illegal acts, and the government has to go after them, frequently we have no choice to find out what is going on, on the inside, except to find out through one of them. I would much prefer to put someone else on the stand than Frank Cedrone. Pastore chose him, and he chose to associate with Frank Cedrone for all of these years, and I don't think he should complain that we are now using him.

And what was the deal? What did the government really give up here in return for the cooperation of Cedrone?

Cedrone has pleaded guilty, pleaded guilty on Count 2, as opposed to other counts in this indictment. It is the same, and it doesn't make any difference, and he is just as guilty as he would be

if the case went to a jury and a jury returned a verdict of guilty, and I believe that Mr. Palmiere misstated himself, or made a mistake in his statement with regard to the law when he said that Mr. Cedrone had somehow escaped civil liability from his failure to report his income correctly. The dismissal of Count 1 has absolutely nothing to do with the money that Frank Cedrone owes to the government. He still owes whatever it is. If it is \$115,000, he will have to pay it, if he has it. Disposing of the criminal case against Cedrone had nothing to do with the government's civil claims against Cedrone. But Cedrone has pleaded guilty, and as you heard, he is facing serious possible confinement and penalties.

Galloni is admittedly off the Federal hook, but since Galloni's name appeared on so many of these checks, the Government felt that we had to have him in this trial. Now, his testimony has been fully corroborated by the handwriting expert. The handwriting expert says that Galloni did not sign any of these checks. Mr. Palmiere contends that Galloni, knowing that his handwriting was going to be compared, that he somehow falsified his handwriting on these specimens.

Well, these specimens are in evidence.

and you take them in the jury room, and you take a look at them. If he falsified his handwriting on these two pieces of paper, he did it pretty convincingly. He made the same falsification every time, because they all look the same to me, and that is why you have a person write his signature several times, and you can see it about twenty times there, and take a look and it looks the same to me.

And we are talking about Galloni. Let me bring to your attention something that I think I mentioned several times. All of these checks were payable to G-A-L-L-O-N-I, and endorsed on the reverse side of the check with a G-A-L-L-O-N-I, with two L's. Nick Galoni spells his name G-A-L-O-N-I, with just one L. I don't think he would have made that mistake if he had been writing up these checks.

So, finally, with regard to the government deal: There are three primary participants in this raid on the Town of Fleming: Frank Cedrone was one of them, and probably the foremost one. He is guilty, and he is convicted, and he is going to be sentenced.

Lenny Cedrone is dead, and that leaves Vito Pastore. He is on trial. So the government feels that it has achieved its purpose here of bringing

the three primary people before the bar of Justice, and we make no apologies for any so-called deals that anyone thinks were made.

Now, what is the picture that emerges from this trial? Not a very pretty one, I say. It is a picture of a corrupt representative of the people of the Town of Fleming getting together with the likes of Frank and Lenny Cedrone, and just lining their pockets with all of the money that was available in this project.

MR. PALMIERE: Your Honor, I object.

THE COURT: Please don't interrupt.

I think that it is fair argument on the basis of the evidence. Whether that is what the evidence shows is for the jury. That is terrible.

MR. LOWE: The people who suffer, of course, are the people of the Town of Fleming. Vito Pastore was the Town Attorney, and Mr. Harold Orchard, who is the Town Supervisor, testified for us that Vito Pastore's special responsibility was --

THE COURT: (Interrupting) I might say to the jury that the defendant here is not on trial for any charge of corruption or anything of that kind. He is on trial simply and solely for deliberately and willingly and knowingly filing -- on

the charge of knowingly and wilfully having filed a false income tax return in which he substantially under-estimated his gross income, and Mr. Lowe, I think that you should focus on that.

MR. LOWE: Yes, sir, your Honor, and the point that I am making now, and I will finish with this, is to point out the manner in which Vito Pastore was able to render services for Ron-Ore Soil Systems for which he was compensated, for which he obtained income; he was the Attorney for the Town of Fleming, and his special assignment was the Sewer District. He was supposed to be representing the Town of Fleming as against Ron-Ore Soil Systems. But what has the evidence shown was, in fact, the case? Whose side was Vito Pastore on, here?

The name Ron-Ore --

MR. PALMIERE: Again, I ask the Court admonish the jury that he is not --

THE COURT: (Interrupting) I have just done it.

MR. PALMIERE: But, it is not in conflict --

THE COURT: (Interrupting) Please do not interrupt again. I have already instructed the jury, and if there is anything further I will instruct

them at the appropriate time, which is not now.

MR. LOWE: The name "Ron-Ore," Mr. Cedrone tells us, that Ron is for Cedrone, and Ore is for Pastore. If you believe Frank Cedrone on that -- well, whether you do or not, isn't it obvious that Ron is for Cedrone and Ore is for Pastore? Who set up Ron-Ore? Who did the incorporating of Ron-Ore? Mr. Pettigrass. Who is John Pettigrass? He shares office space with Vito Pastore. Who went with Frank Cedrone when Frank Cedrone went to the Marine Midland Bank and set up the bank account for Ron-Ore Systems to do the necessary paper work? Who was the assistant in representing him? Vito Pastore.

Where did the bank's statement and the cancelled checks of the Ron-Ore Systems go to? Look at this exhibit in evidence. It went to 64 Genesee Street, where Vito Pastore's office is located. Mr. Palmiere, in his summation, made much of the fact that Vito Pastore was representing Frank Cedrone during all of 1971. I think that that is their defense, that Pastore, the Town Attorney, is representing Frank Cedrone in some of these other matters. Consider the difficulties with the performance bond, and the labor and materials payment bond. Frank Cedrone was in bad shape financially, and Mr. Pastore knew that.

Mr. Pastore had conversations with Lou Contiguglia about the necessity of them coming up with that bond, and the 45th day was approaching, and they had to get it. All of a sudden Mr. Pastore does show up with the bond. Of course, we now know after the testimony of Mr. Scrippa, that that is not his signature on that bond, and he wasn't even employed by the Trans-America Insurance Company when the bond was prepared.

In the cross-examination of Mr. Contiguglia, Mr. Palmiere tried to infer, I think, that attorneys do not check into those things, or the accuracy of signatures on bonds. But if all of the transactions concerning J & K Pipe Company and Frank Cedrone were available to a conscientious attorney and to the Attorney of the Town of Fleming, wouldn't he have checked that, if he knew that much about Frank Cedrone as Vito Pastore did?

And finally, the meeting in Skaneateles with the reference to the \$75,000 bond, and what does that mean? The government submits, ladies and gentlemen, that it was for these reasons, the reasons that I just summarized for you, that the defendant, the Attorney for the Town of Fleming, received substantial payments from Ron-Ore Soil Systems Limited.

He had a service that he could provide to Ron-Ore, and he could provide that service, and he was paid for it, and there is no question that he failed to report it as gross income on his tax return, and we submit that that fact has been proven beyond any doubt, based upon a reason, and we request that you return a verdict of guilty.

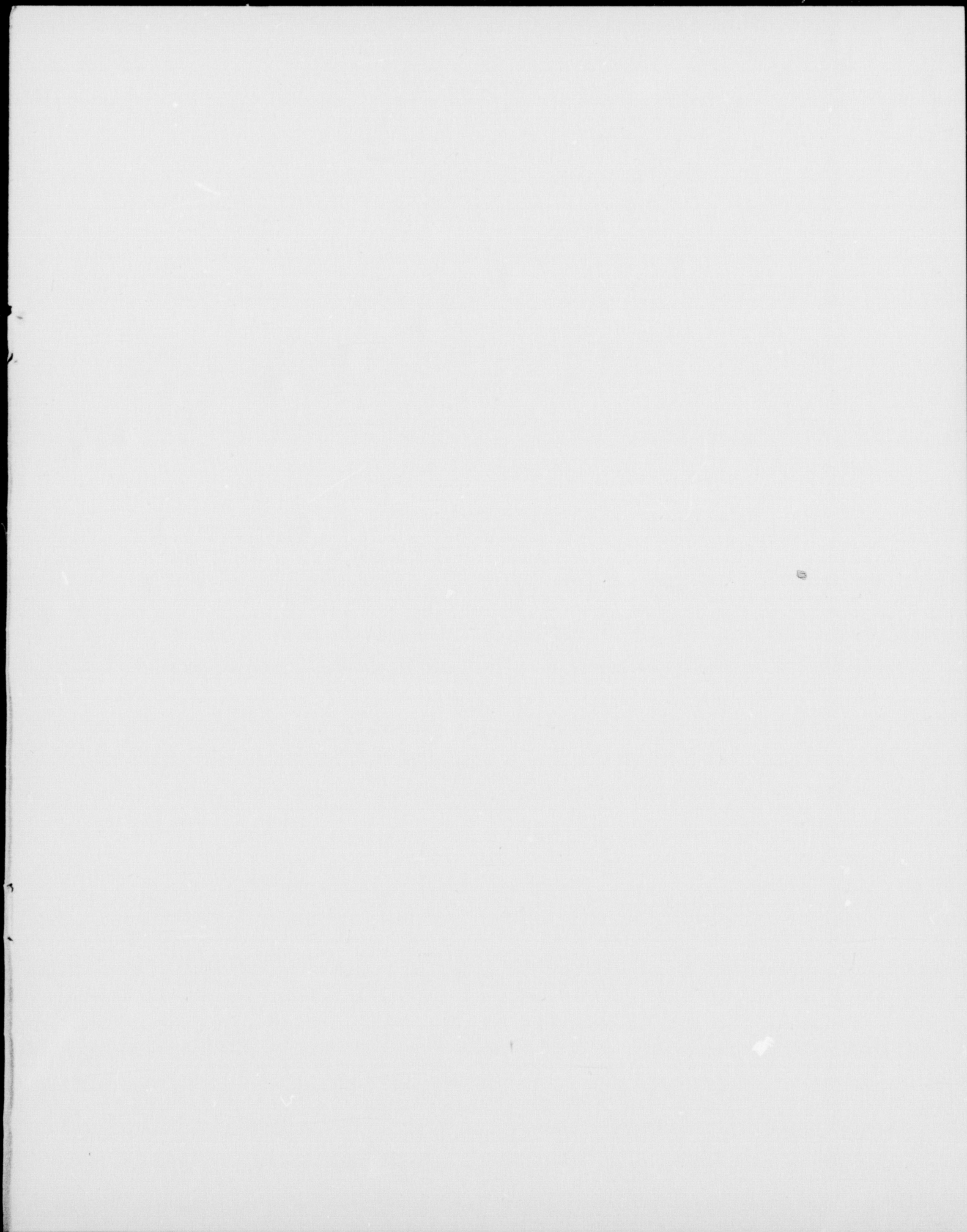
THE COURT: We will take a short recess, and then the Court will instruct the jury. I want to get the case into your hands tonight while the evidence is still fresh in your minds, and right after you have heard the arguments of the lawyers, and so forth. We will take a very brief recess.

(After a brief recess, the proceedings were resumed.)

THE COURT: Ladies and gentlemen, now, I am the exclusive judge of the law, and I hate to interrupt one of the lawyers, but he was getting into a new area, but concerning the law, I am the exclusive judge of the law in this Court, so you must accept the law as I give it to you, whether or not you agree with it, or whether or not you think that the law ought to be something different from what I tell you it is.

Now, just as I am the exclusive judge

* * * * *



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LETTER OF TRANSMITTAL

Date: March 11, 1976

Hon. A. Daniel Fusaro, Clerk
U. S. Court of Appeals, Second Circuit
Room 1702 U. S. Court House
Foley Square
New York, NY 10007

Re: U. S. A vs. Vito M. Pastore

~~Index No.~~ Docket No. 75-1428

Dear Sir:

Enclosed please find copies of the above entitled for filing as follows:

[10] ~~Records~~ Appendix
/ 0 [25] Briefs
[] ~~Original Record enclosed~~
[] ~~Original Record inclosed~~

Very truly yours,

Everett J. Rea
Everett J. Rea